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Toronto

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KABIR SINGH

Plaintiff

– and –

RBC INSURANCE AGENCY LTD, AND  
AVIVA GENERAL INSURANCE COMPANY

Defendant

**Proceedings commenced under the *Class Proceedings Act, 1992***

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for the costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued by: \_\_\_\_\_  
Local Registrar

Address of Court Office:  
393 University Avenue  
Toronto, ON M5G 1E6

**To: RBC INSURANCE AGENCY LTD.,**  
6880 Financial Drive, West Tower  
Mississauga ON L5N 7Y5  
Canada; and

**AVIVA GENERAL INSURANCE COMPANY**  
10 Aviva Way, Suite 100  
Markham ON L6G 0G1  
Canada

## RELIEF CLAIMED

1. The Proposed Representative Plaintiff claims the following on his behalf, and on behalf of members of the Class:
  - a) The sum of \$80,000,000 as general damages covering the damages to the class;
  - b) an order certifying this action as a class proceeding and appointing Kabir Singh as Representative Plaintiff of the Class;
  - c) a declaration that the members of the Class are owed public holiday and vacation pay above and beyond the compensation they were paid;
  - d) that damages be paid to each class member equal to the public holiday and vacation pay that they ought to have received during their employment with the Defendant;
  - e) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
  - f) post-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
  - g) any goods and services tax or harmonized sales tax which may be payable on any amounts pursuant to Bill C-62, the *Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada or Ontario;
  - h) the costs of this action on a substantial indemnity basis; and
  - i) such further and other relief as counsel may advise and this Honourable Court permits.

## BACKGROUND

2. The Defendant RBC Insurance Agency Ltd. “**RBC Insurance**” is a federally incorporated but provincially regulated insurance company.
3. The Defendant Aviva General Insurance Company (“**Aviva General**”, together with RBC Insurance, “**RBC**”) is a federally regulated property and casualty insurance company. It was formerly known as RBC General Insurance Company and changed its name in or about January 2016.

4. Kabir Singh is an individual residing in the Province of Ontario. Mr. Singh worked for RBC Insurance for three years. He started with RBC in or about 2016 as an insurance advisor in the Advice Centre. Mr. Singh's last day with RBC was on or about April 2019.
5. Mr. Singh was a Property and Casualty insurance advisor ("**Advisor**") since May 2018 until his termination in 2019.
6. As an Advisor, Mr. Singh is a commissioned salesperson. His salary was comprised of a base salary of \$35,000.00 plus commissions. The commissions were based on Mr. Singh's ability to sell home, auto and travel insurance policies when he was a Property and Casualty Insurance advisor.
7. This class action is ~~because~~ brought because Mr. Singh, and other commissioned salespeople working for the Defendant, received vacation and public holiday pay solely on his base salary and not on his total compensation.

#### **COMPENSATION POLICY EXCLUDE VACATION AND PUBLIC HOLIDAY PAY**

8. RBC compensates Advisors based on their "Property & Casualty Insurance Advisor, Field Sales" policy which governs all Property & Casualty Insurance Advisor, Field Sales individuals.
9. The policies systemically apply to all commissioned salespeople in their respective areas.
10. The compensation policy applicable to Mr. Singh held did not provide for Vacation and Statutory Holiday Pay contrary to the *Employment Standards Act, 2000* ("*ESA*"). Mr. Singh seeks to be a representative Plaintiff for all persons denied such compensation while working for the Defendants.
11. The Property & Casualty Insurance Advisor, Field Sales policy states that:
  - a. "As an Advisor, you are expected to use time off for rest and relaxation throughout the year in keeping with applicable RBC policy. Your vacation

entitlement is based on your position level and will increase according to the length of service as outlined in the applicable RBC policy.”

- b. “All Variable Compensation components of the Plan have been established at a level that includes both Vacation Pay and Statutory Holiday Pay.”
12. Therefore based on the policy, Mr. Singh never received separate Vacation or Statutory Holiday Pay.
  13. The policies set out mathematical calculation of earnings that sets out total compensation. That total compensation calculation does not include any calculation for Statutory Holiday or Vacation Pay.

#### **APPLICATION OF STATUTORY ENTITLEMENTS**

14. Under the *Employment Standards Act, 2000* (“ESA”) employees must be paid additional Public Holiday Pay above and beyond their regular pay as per s. 24-32. As per s. 24(1) of the ESA employees with variable compensation this pay is to be an average of what they made over the preceding 20 days.
15. Under the ESA employees must be paid additional Vacation Pay above and beyond their regular pay as per s. 35.2. This pay must not be less than 4 per cent of the wages earned by the employee for those with less than five years seniority and 6 per cent for those with greater than five years seniority.
16. As per s. 5(1) no employee may opt out of a benefit of the ESA unless the employee receives a greater benefit.
17. Mr. Singh pleads that as per s. 15.1 of the ESA the Defendants were required to keep detailed records of his vacation time payments, but was not aware of any such records.

## **EMPLOYEES DENIED VACATION AND PUBLIC HOLIDAY PAY**

18. The Defendants compensation plan does not provide for Public Holiday Pay or Vacation Pay computed as a percentage of the fixed and variable component of an Advisor's wage. The policy therefore violates the ESA and the employees are owed additional compensation throughout their employment.

19. As per s. 40(1) and (2) of the ESA the Vacation Pay that ought to have been paid has a trust over it and also a lien upon the monies that ought to have been paid.

### **The Class**

20. This action is brought on behalf of a class of persons, defined as:

All commissioned employees of RBC INSURANCE AGENCY LTD and AVIVA GENERAL INSURANCE COMPANY, their predecessors or successors, within Ontario who were paid for vacation and public holiday pay on their base salary and not total compensation and who are not exempt from such payments.

21. Mr. Singh seeks to have the class time period run from the founding of RBC Insurance in 1993 until when the notice of class action is sent out to class members with the opt-out forms.

### **LOCATION**

22. Mr. Singh proposes this action be tried at the City of Toronto, in the Province of Ontario.

Date of Issue:

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Toronto, ON M5J 2W4

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**SINGH KABIR** and **RBC INSURANCE AGENCY LTD, AND**  
**AVIVA GENERAL INSURANCE COMPANY**  
PLAINTIFF DEFENDANT

Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

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